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January 19, 2006

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\*ADMITTED TO D.C. BAR  
D.C. PRACTICE OF ALL OTHERS  
LIMITED TO FEDERAL COURTS  
AND AGENCIES

**USPTO FOIA Officer**  
**United States Patent and Trademark Office**  
**Madison Building East**  
**600 Dulany Street**  
**Alexandria, VA 22314**  
**efoia@uspto.gov**

Re: **FREEDOM OF INFORMATION REQUEST REGARDING**  
Third party communications with the USPTO Relating to  
U.S. Patent No. 4,855,290, the Petition for Patent Term Extension,  
and the Certificate Extending Patent Term (photocopy  
mis-mailed 5 December 2005, original mailed 13 Jan. 2006)  
Our ref: 7398/71275

Dear Sir:

Pursuant to the Freedom of Information Act we request the U.S. Patent and Trademark Office to produce copies of all communications between the U.S. Patent and Trademark Office and entities (including natural persons) having no power of attorney to act in the Petition for Patent Term Extension, now granted, for U.S. Patent No. 4,855,290. The requested records include written and electronic – such as email – communications and any notes or other related Patent Office records. Upon present information these communications may have been directed to person(s) within the U.S. Patent and Trademark Office, Office of Patent Legal Administration.

Copies of emails in electronic format are requested for possible forensic analysis. However, documents that are image-accessible via the PTO Public Pair file history for U.S. Patent No. 4,855,290 are not part of this request.

This request is regrettably filed, but is necessitated because of the problems that have arisen because the power of attorney to the undersigned for this application and for the Petition for Patent Term Extension was not timely entered by the U.S. Patent and Trademark Office. From 2002 to 2005 the official Patent Office communications regarding the Petition for patent term extension were directed to a law firm that had no power of attorney of record to act for the petitioner. This is because the Patent Office failed to enter the proper address change and proper power of attorney to the undersigned, which was first filed herein in 2002, see attached facsimile confirmations.

Unfortunately these Patent Office oversights appear to have prompted one or more third parties, not of record in this matter, to become involved in the Petition process, including making request(s) to other third parties to file address changes despite apparently being informed to contact the undersigned.

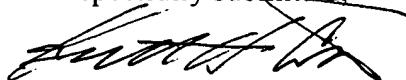
Specifically, upon present information and belief certain third parties, including at least one individual with a law firm, sent emails to the U.S. Patent and Trademark Office, Office of Patent Legal Administration relating to the Petition and/or the Certificate Extending Patent Term.

A fee waiver is requested, see the Federal Register, volume 65, number 170, pages 52920 – 52923 (August 31, 2000), and alternatively we petition pursuant to 37 CFR 1.181, 1.182 and/or 1.183 to have the FOIA fee rules suspended and the petition fee can be charged to our deposit account 06-1135 regarding our order number 7398/71275.

If the Patent Office written decision is against the fee waiver, then contingently, “document” reproduction/searching charges up to \$100 can be charged to our deposit account 06-1135 regarding our order number 7398/71275. Again, contingently, if the reproduction costs will exceed \$100, then please contact the undersigned counsel for Requestor.

Expedited consideration is respectfully solicited.

Respectfully submitted,



Kendrew H. Colton  
Reg. No. 30,368

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\*\*\* TX REPORT \*\*\*  
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TRANSMISSION OK

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The Honorable Commissioner of Patents  
and Trademarks  
Box Patent Ext.  
Washington, D.C. 20231

April 1, 2004  
Facsimile: 703-872-9411  
Pages: 3

Attn: Karin Ferriter  
Senior Legal Advisor, Office of Patents Legal Administration  
Office of the Assistant Commissioner for Patent Examination Policy

Re: U.S. Patent No. 4,855,290  
Our Ref.: 7398/71275

Dear Ms. Ferriter:

Thank you for taking my telephone call this morning. I am enclosing a copy of my May 15, 2002 submission to ensure that your working file includes the power of attorney. The power of attorney expressly includes appointment with respect to this patent term extension.

We thank you in advance for your cooperation and kind assistance.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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## Auto-Reply Facsimile Transmission

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04/01/2004 09:38 FAX 202 419 7007		FITCH EVEN	0001
<p><b>fetsf</b> <b>Fitch, Even, Tabin &amp; Flannery</b> Intellectual Property Law</p> <p>1801 K Street, Suite 401L Washington, DC 20006-1201 Telephone: 202.419.7000 Facsimile: 202.419.7007</p>			
<p>Kendrew H. Colton tel: (202) 419-7015 email: <a href="mailto:kcolton@fitcheven.com">kcolton@fitcheven.com</a></p>		<p>April 1, 2004 Facsimile: 703-872-9411 Pages: 3</p>	
<p>The Honorable Commissioner of Patents and Trademarks Box Patent Ext. Washington, D.C. 20231</p>			
<p>Attn: Karin Ferriter Senior Legal Advisor, Office of Patents Legal Administration Office of the Assistant Commissioner for Patent Examination Policy</p>			
<p>Re: U.S. Patent No. 4,855,290 Over Ref.: 7398/71275</p>			
<p>Dear Ms. Ferriter:</p> <p>Thank you for taking my telephone call this morning. I am enclosing a copy of my May 15, 2002 submission to ensure that your working file includes the power of attorney. The power of attorney expressly includes appointment with respect to this patent term extension.</p> <p>We thank you in advance for your cooperation and kind assistance.</p> <p>Respectfully submitted,</p> <p>FITCH, EVEN, TABIN &amp; FLANNERY</p> <p><i>[Signature]</i> Kendrew H. Colton Registration No. 30,368 Tel: 202-419-7000 (ext. 7015) Fax: 202-419-7007</p>			
<p>A full service intellectual property law firm with offices in Washington D.C., Chicago, Boston and San Diego <a href="http://www.fitcheven.com">www.fitcheven.com</a></p>			
<p>PAGE 10 'RCVD AT 4/1/2004 9:30:29 AM [Eastern Standard Time]' SVR:USPTO-EF/XF-10 'DMS:8729411' CSD:2024197007 'DURATION (min:ss):01:20'</p>			